

Hotel 24, LLC v Estate of Vallario
2014 NY Slip Op 32942(U)
November 13, 2014
Supreme Court, New York County
Docket Number: 652825/2014
Judge: Shirley Werner Kornreich
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SHIRLEY WERNER KORNREICH
J.S.C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
HOTEL 24, LLC,

Index No: 652825/2014

Plaintiff,

DECISION & ORDER

-against-

ESTATE OF MICHAEL VALLARIO, CAMILLE
VALLARIO, DANIEL VALLARIO, and PETER
VALLARIO, as Executors of the Estate of Michael
Vallario,

Defendants.

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SHIRLEY WERNER KORNREICH, J.:

Plaintiff Hotel 24, LLC moves by order to show cause for a preliminary injunction against defendants, the Estate of Michael Vallario, Camille Vallario, Daniel Vallario, and Peter Vallario. Plaintiff's motion is granted in part and denied in part for the reasons that follow.

I. Procedural History & Factual Background

The following facts are undisputed.

This action is related to prior litigation over the ownership and management of a hotel located at 25 West 24th Street in Manhattan (the Hotel). In a now disposed lawsuit, styled *Vallario v Irslinger*, Index No. 651760/2012, this court held that Michael Vallario, George Vallario, and Michael Irslinger each owned one-third of the Hotel. Familiarity with the prior litigation is presumed.

Michael Vallario died on June 11, 2013. His one-third interest in the Hotel is now owned by his wife, Camille. On August 11, 2014, the owners of the other two-thirds of the Hotel, George Vallario and Michael Irslinger, sold their equity in the Hotel to plaintiff. George

Vallario and Michael Irslinger each submitted notarized affidavits attesting to that sale. See Dkt. 17 & 18. Defendants have not submitted evidence to the contrary.

The Hotel, however, is being run by defendant Daniel Vallario, Michael and Camille's son. He refuses to give up control of the Hotel or provide plaintiff with the Hotel's business records. On September 17, 2014, plaintiff commenced this action by filing a complaint with a single declaratory judgment cause of action, which seeks an order declaring that plaintiff is the rightful owner of two-thirds of the Hotel and, as majority owner, has the right to manage the Hotel. Plaintiff also filed the instant motion by order to show cause for a preliminary injunction seeking such relief.

On September 24, 2014, after oral argument, the court issued an interim order (Dkt. 19) compelling defendants to provide plaintiff "full access to the Hotel and to all of the books and records" (emphasis in original). The court reserved on the balance of the motion.

II. Discussion

Pursuant to CPLR 6301, "[i]njunctive relief may only be awarded if the movant makes a clear showing of a probability of success on the merits, a danger of irreparable injury in the absence of an injunction, and that the balancing of the equities weighs in its favor." *Goldstone v Gracie Terrace Apt. Corp.*, 110 AD3d 101, 104-05 (1st Dept 2013), citing *Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839 (2005), accord *Doe v Axelrod*, 73 NY2d 748 (1988). Ordinarily, however, a mandatory preliminary injunction tantamount to the ultimate relief sought in the lawsuit may not be granted prior to the joinder of issue. See *Northern Funding, LLC v 244 Madison Realty Corp.*, 41 AD3d 182, 183 (1st Dept 2007), citing *St. Paul Fire & Marine Ins. Co. v York Claims Serv., Inc.*, 308 AD2d 347, 349 (1st Dept 2003). Granting this type of injunctive relief is "unusual" and only done when such "relief is essential to maintain the *status*

quo pending trial.” See Jones v Park Front Apts., LLC, 73 AD3d 612 (1st Dept 2010), quoting Second on Second Cafe, Inc. v Hing Sing Trading, Inc., 66 AD3d 255, 264 (1st Dept 2009).

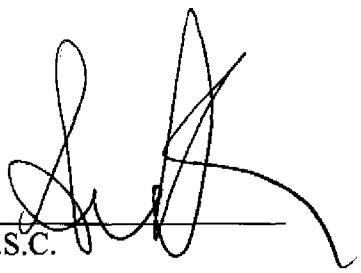
Here, the status quo – Daniel running the Hotel over the objection of the majority owner – is troublesome. Nonetheless, the balance of plaintiff’s motion is denied without prejudice because the injunction sought is the very declaratory judgment as to ownership and control that is the ultimate relief at issue in this action. To be sure, plaintiff is likely to succeed in this action. Irreparable harm and the equities, however, do not mandate the grant of the preliminary injunction. Plaintiff’s damages are monetary. That being said, discovery is unnecessary and a resolution of the conflict over the Hotel is long overdue. Moreover, and until control is transferred to plaintiff, it should go without saying that Daniel must fulfill his fiduciary duties to the Hotel, such as accurately reporting all cash sales and limiting salaries paid to those employees actually working for the Hotel in an amount commensurate with their services rendered. To the extent plaintiff is concerned that Daniel is improperly making distributions of money to family members, such actions are recoverable as monetary damages are recoverable. *See Lombard v Station Square Inn Apts. Corp., 94 AD3d 717, 721 (2d Dept 2012).*

Regardless, this matter deserves an expedient and final resolution. Consequently, from the date the instant order is filed on the NYSCEF system, the following schedule must strictly be adhered to and will not be altered for any reason: (1) defendants must file an answer within 7 days; (2) plaintiff is to move for summary judgment within 7 days thereafter; (3) defendant may file opposition papers within 7 days thereafter; and (4) plaintiff may file a reply within 7 days thereafter. The motion will be decided on the papers without oral argument. The parties shall ensure they timely submit hard copies of their motion papers on the Room 130 return date.

Formal discovery is stayed in the interim, but David's obligation to provide plaintiff with complete access to the Hotel's records remains in effect. Accordingly, it is

ORDERED that plaintiff's motion for a preliminary injunction is granted in part to the extent of directing that plaintiff have full access to the hotel and all of the books and records, as set forth on the September 24, 2014 oral argument record (Dkt. 20) and the interim order issued that same day (Dkt. 19), the balance of the motion is denied without prejudice, and the parties are directed to timely comply with the schedule set forth above.

Dated: November 13, 2014

ENTER: 

J.S.C.